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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,651	03/09/2006	Thomas Corbett	ARD128USA	3443
24339	7590	04/11/2008		
JOEL D. SKINNER, JR. SKINNER AND ASSOCIATES 212 COMMERCIAL ST. HUDSON, WI 54016			EXAMINER BERRY, WILLIE WENDELL JR	
			ART UNIT	PAPER NUMBER
			3643	
			MAIL DATE	DELIVERY MODE
			04/11/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,651

Applicant(s)

CORBETT, THOMAS

Examiner

WILLIE W. BERRY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

The affidavit under 37 CFR 1.132 filed 11/13/07 is insufficient to overcome the rejection of claim 1 based upon Peleg in view of Durham as set forth in the last Office action because: It include(s) statements which amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both end frame upright and be part of the leg members (12). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be

notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because the nonessential material incorporated by British Patent Application No. 0210091.5 cannot be verified because the British Application has not been disclosed to the Patent Office.

An incorporation of material by reference that does not comply with paragraphs (b), (c), or (d) of section § 1.57 is not effective to incorporate such material unless corrected within any time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114(b), or abandonment of the application, whichever occurs earlier. In addition:

- (1) A correction to comply with paragraph (b)(1) of § 1.57 is permitted only if the application as filed clearly conveys an intent to incorporate the material by reference. A mere reference to material does not convey an intent to incorporate the material by reference.
- (2) A correction to comply with paragraph (b)(2) of § 1.57 is only permitted for material that was sufficiently described to uniquely identify the document.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over patent no. 4,837,990 to Peleg in view of patent no. 3,162,920 to Durham.

Peleg discloses a polytunnel system comprising a plurality of cover support members (4); a series of leg members (2) and a cover (6); wherein the cover support members are securable to the leg members at a plurality of different heights (col. 3, lines 30-36); wherein each leg member carries a bracket (10 and 12) which, in turn, carries the associated cover support member; the bracket being securable to the leg member in a range of positions, wherein each bracket (10 and 12) defines a passage through which the associated leg member (2) extends (not numbered, but shown in fig. 2); wherein the bracket defines an opening (not numbered, but shown in fig. 2) and the associated leg member is provided with a series of openings (not numbered, but shown in fig. 2); a fixing pin being locatable within the opening of the bracket and selected one of the openings of the leg member to secure the bracket in a selected position (col. 3, lines 30-36); wherein each bracket includes at least one arm (10) onto or over which part of an associated cover support member can be located; and wherein the ends of the cover support members extend generally vertically (not numbered, but shown in fig. 3).

Peleg does not disclose a movable rope anchorage points.

Durham teaches it is known to have a rope anchorage point (28) in a removable grommet attachment structure for sheet covers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Peleg to include the teachings of Durham for the purpose of providing a means of securing a covering as stated by Durham in col. 1, lines 25-30.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peleg in view of Durham as applied to claim 1 above, and further in view of patent no. 4,651,466 to Robinson.

Peleg in view of Durham disclose as discussed above.

Peleg in view of Durham does not disclose a bracket having a socket used for receiving a cover support member.

Robinson teaches it is known to have a bracket (40) having a socket (45 and 50) used for receiving a cover support member in a garden bed frame.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Peleg in view of Durham to include the teachings of Robinson for the purpose of substituting one bracket used for supporting a cover support member for another.

Response to Arguments

Applicant's arguments filed 10/15/07 have been fully considered but they are not persuasive. Applicant's request for entry and reconsideration of the reply filed on 7/12/07 is granted and the examiner will consider all arguments raised in applicant's 7/12/07 and 10/15/07 response. Applicant argues that Peleg does not disclose any

height adjustability, and particularly not in situ adjustment. The examiner disagrees because Peleg has telescoping elements (12 and 2), which allow for adjustment of height in situ or not in situ. Applicant argues rope anchors are attached to tarp and ground instead of the legs. The examiner believes that the rope anchors of Durham are capable of securing a cover when attached to the legs of Peleg since Durham discloses his rope anchors are removable and capable of being placed at the user preference. Applicant argues that there will be no need to combine the teachings of Durham with Peleg. The examiner disagrees for the reasons stated above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIE W. BERRY whose telephone number is (571)272-8974. The examiner can normally be reached on 9:00am to 5:30pm Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wbj.

/Peter M. Poon/

Supervisory Patent Examiner, Art Unit 3643

Application Number**Application/Control No.**

10/541,651

Examiner

WILLIE W. BERRY

**Applicant(s)/Patent under
Reexamination**

CORBETT, THOMAS

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